

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LIBERTY MUTUAL INSURANCE
COMPANY, a Massachusetts corporation,

Plaintiff,

v.

SEARS, ROEBUCK & CO., a New York
corporation,

Defendant.

SEARS, ROEBUCK & CO., a New York
corporation,

Third-Party Plaintiff,

v.

NORTH KITSAP DELIVERY, INC., an
inactive Washington corporation, WILLIAM E.
PARMELEE and RENEE E. PARMELEE,
husband and wife and the marital community
comprised thereof, D/B/A NORTH KITSAP
SHOPPING ADVANTAGE, an inactive
Washington sole proprietorship,

Third-Party Defendants.

Case No. C04-5089FDB

ORDER GRANTING PLAINTIFF'S
MOTION TO AMEND COMPLAINT


1 Plaintiff Liberty Mutual Insurance (Liberty Mutual) moves for an order allowing filing of
2 Plaintiff's First Amended Complaint to add a new allegation that Sears sold a product to Plaintiff's
3 insured, Dr. Omorchoe, that was not fit for the particular purpose Dr. Omorchoe intended and that
4 the sale amounts to a breach of warranty of fitness for a particular purpose.

5 Defendant Sears, Roebuck & Co. (Sears) opposes the motion arguing that the amended
6 complaint complicates discovery, that Plaintiff cannot amend the Complaint in order to avoid
7 summary judgment, and the new claim lacks merit.

8 The deadline for filing amended pleadings is October 11, 2005, and discovery cutoff is
9 November 18, 2005. Defense counsel was made aware of the new claim prior to filing this motion
10 in June or early July 2005. The motion to file an amended complaint is well within the Court's
11 schedule. Defendant Sears has not demonstrated undue prejudice or surprise. Rule 15(a) of the
12 Federal Rules of Civil Procedure provides that "leave shall be freely given when justice so requires."

13 ACCORDINGLY, IT IS ORDERED: Plaintiff Liberty Mutual's Motion To Amend
14 Complaint [Dkt. # 30] is GRANTED and Plaintiff may file its First Amended Complaint in the form
15 attached to its Motion To Amend Complaint.

16
17 DATED this 17th day of August, 2005.

18
19
20 
21 FRANKLIN D. BURGESS
22 UNITED STATES DISTRICT JUDGE
23
24
25
26